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SENATE BILL 646

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO CRIMINAL RECORDS; CODIFYING AUTHORITY TO EXPUNGE A  
CRIMINAL RECORD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Criminal Record Expungement Act".

Section 2. DEFINITIONS.--As used in the Criminal Record  
Expungement Act:

A. "accused" means a person charged with a crime  
who is the subject of an expungement order, or that person's  
representative;

B. "arrest records" means records of identification  
of a person under arrest or under investigation for a crime,  
taken or gathered by an official; "arrest records" includes  
information gathered from the national crime information center

underscored material = new  
[bracketed material] = delete

1 or another criminal record database, photographs, fingerprints  
2 and booking sheets;

3 C. "expunge" means to remove a notation of an  
4 arrest placed on an accused's state record or federal bureau of  
5 investigation record and to destroy or otherwise remove all  
6 records of the proceeding;

7 D. "official" means a person employed by a  
8 governmental entity and acting within assigned duties;

9 E. "proceeding" means a hearing, trial or grand  
10 jury proceeding; and

11 F. "public records" means recordation and all index  
12 and other references relating to a person's arrest, indictment  
13 or information; trial; finding or plea of guilty; and dismissal  
14 or discharge; but "public records" does not include:

15 (1) an investigative report, intelligence  
16 information of law enforcement agencies or the file of a  
17 district attorney or attorney general maintained as a  
18 confidential record for law enforcement purposes and not open  
19 for inspection by members of the public; or

20 (2) a record maintained by the children, youth  
21 and families department, the human services department or the  
22 public education department when that record is confidential  
23 under state or federal law and is required to be maintained by  
24 state or federal law for audit or other purposes.

25 Section 3. EXPUNGEMENT OF RECORDS.--A court of original

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1 jurisdiction, upon its own motion or upon a petition from an  
2 accused, shall order expungement of public records and files  
3 within thirty days of the day a petition for expungement was  
4 filed if it finds that no other charge or proceeding is pending  
5 against the accused and that:

6 A. the accused was a victim of identity theft;

7 B. the accused, in a proceeding for a violation of  
8 a municipal ordinance, misdemeanor or felony, was released  
9 without a conviction, including:

10 (1) an acquittal or finding of not guilty;

11 (2) a nolle prosequi, a no bill or a  
12 dismissal;

13 (3) a referral to a pre-prosecution diversion  
14 program; or

15 (4) proceedings were otherwise discharged; or

16 C. the accused was convicted for an offense but has  
17 had no other conviction after completion of the sentence for  
18 the original conviction:

19 (1) for a period of two years after a  
20 misdemeanor or a violation of a municipal ordinance conviction  
21 that was not an offense committed against minors or children, a  
22 sex offense, an offense involving domestic violence or abuse or  
23 an offense involving driving while under the influence of  
24 intoxicating substances; or

25 (2) for a period of four years after a

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1 misdemeanor aggravated battery conviction.

2 Section 4. NOTICES-- RULEMAKING. --

3 A. The court shall provide by rule for the form of  
4 expungement, requiring:

5 (1) a court to expunge its public records;

6 (2) a court to serve written notice to an  
7 accused who was the victim of identity theft or who was charged  
8 but released without a conviction of the procedures for  
9 expungement and the right to petition the court for  
10 expungement;

11 (3) a court to transmit copies of the order of  
12 expungement to an appropriate agency or official with a demand  
13 to expunge public records concerning the accused and a response  
14 form to be returned to the court within thirty days to verify  
15 that the public records have been expunged;

16 (4) a certificate of expungement, to be  
17 returned to the court, verifying that public records have been  
18 expunged; and

19 (5) that a copy of that certificate be made  
20 available to the accused.

21 B. When an order of expungement is directed to the  
22 children, youth and families department, the human services  
23 department or the public education department, the department  
24 to which the order of expungement is directed may respond by  
25 complying with the order or by:

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(1) notifying the court if the records are confidential records under state or federal law and are required to be maintained by state or federal law for audit or other purposes;

(2) deleting identifying information and subsequently releasing the records when permitted by state or federal law; or

(3) deleting information related to the expungement order when permitted by state or federal law.

Section 5. EFFECT OF AN EXPUNGEMENT ORDER. -- Upon entry of an expungement order, the proceedings shall be treated as if they never occurred and officials and the accused may reply to an inquiry that no record exists with respect to the accused. This section does not affect or otherwise infringe upon the expungement provisions of Section 29-3-8.1 NMSA 1978.

Section 6. EFFECTIVE DATE. -- The effective date of the provisions of this act is January 1, 2006.